

Brig Flat'y.....
Brig Minerva.....

LAW INTELLIGENCE.

SUPREME COURT—SPECIAL TERM—MARCH 21.—*Re*
Justice Ingraham.
THE MORRIS FIRE AND INLAND INSURANCE COMPANY
ANOTHER MOTION TO PUNISH MR. STANBURY
FOR CONTEMPT.
This motion was made on the papers heretofore published, and also upon papers in the suit of Daniel W. Thayer, et al., charged in those papers that under an order to show cause from the Third District (Albany), the deputy Attorneys General applied in New-York to Justice Barnard for an order

the Company, which was granted by the Judge to the receiver substituting in place of Mr. Stansbury the President of the Company, who had been suggested as Receiver by Mr. John K. Hackett. That Mr. Hammond then, Feb. 1, 1892, under pretense of taking the papers for copying, obtained them from the clerk, and, after consultation with the officers of the Company, went with Mr. Kirby, the Vice-President of the Company, to Albany, there procured the signatures of the officers before grant of process, and then returned to New York, where he presented the order to show cause before the Court, and was accepted, and at once procured the order dissolving the Company and appointing Mr. Stansbury receiver. This was on the 28th of February. A. J. Taylor, a stockholder, brought an action on the 28th against

Company, in which an injunction was granted and Mr. Hackett reappointed. Mr. Hackett gave the bonds required, and, on the same day, the 25th, demanded the property of the Company from Mr. Stansbury, who refused to do so. Subsequently, a referee was appointed to superintend the transfer of the property, who issued subpoenas to Mr. Stansbury to appear and testify on the property being demanded. He attended before the referee, but refused to swear or to deliver over the assets. The referee then issued orders made to publishing for contempt. The explanation of the case is that the Deputy Attorney-General is the one who recommended the Superintendent of the Insurance Department, a suggestion was entered into with

solvent Company that they would make no objection to dissolution if Mr. Stansbury were appointed receiver; that the presentation of the order to Justice Barnard was made up to this stipulation, and the Judge having disregarded it, the Deputy Attorney-General was bound in honor to have the order rescinded; that the order never was entered, though there was no deposit or concealment made in obtaining the signature of the Clerk, and that under those circumstances the order, signed by the Clerk, and signed by Mr. Stansbury stood in the effect of the Court, and could not be compelled to testify or deliver possession of the Property. The affidavit of Mr. Hammond has been herein already published.

The motion came up for argument this morning, and Mr.

First: All the proceedings, of whatever kind, had in the City and County of Albany are void, for want of jurisdiction to which the Code does not apply.

of the act (—12 R. S., 1st ed., 773, § 11)—and it is a corporation has a residence is well settled. (Code, § 125; *Belmont* against *N. Y. and Har. R. R. Co.*; 15 How. 17. Compare also *Nat. Pro. Ins. Co.* 10 How. 463. People against *Shawmut*, 13 Hun. against *Dunbar*, 18 Wend. 13. *Shawmut* against *Tinkum*, 2 Barb. ch. 136. *Buckle* against *Exchster*, 10 Conn. 134.)

Second, if the Special Term at Albany had jurisdiction at all, it is other to show cause before the Special Term in New York was valid, and from that time the future proceeding must be had here. (See *Insurance Act of 1853*, sec. 24. Law of 1853, page 910.) The language is, that the Attorney-General "shall" apply to the Supreme Court for an order requiring

Yard: If both the positions taken in the two preceding paragraphs were unfounded, it would still be clear that the Government in New York and New Jersey in the case shown, and for that matter in the other cases, had been concerned with the allegations and proofs of the respective parties, and in case it shall appear to the satisfaction of said Court, that the assets and funds of said Company are not sufficient as aforesaid, or that the interests of the public so require, the said Court shall decree a dissolution of said Company, and the distribution of its effects." From the moment, therefore, that the order to show cause in New-York was made, no other Special Term had any jurisdiction.

with the special Term at Albany. The order made here was therefore operative the moment it was made, and dissolved once to it was a contempt.

Fourth: An order entered in the rough minutes is just binding upon those who have notice of it as if it had been entered at greater length, and in a more formal manner. There has been repeatedly decided in respect to orders for injunctions.

Fifth: Upon the rendering, upon the 27th of February, the decree dissolving the Company, the Corporation ceased to exist, and yet pretended service upon it or its officers after that date, and such pretenses of service, were null and void, and conferred no rights at all. The rights of the stockholders and creditors

Sixth: The foregoing points are all made in reference to the special proceedings; but there is, besides, the action done and brought in, which Mr. Teller is plaintiff, and the Company is defendant. The injunction and order made in that suit, and within the jurisdiction of the Court, must also be observed and followed. Mr. Martindale appeared to oppose the same, not as counsel for Mr. Mansbury, but knowing that it was charged with a contempt for certain matters in which the Attorney-General's office was concerned, and believing

First: Neither the Receiver Hackett nor the Referees Haskin has any Bority or Jurisdiction to act in this case.

The office of Mr. Haskin is in aid of Mr. Hackett, and, if it latter has no authority in the premises, the former has no force nor duties to discharge.

Second: On the 15th of February the Deputy Attorney General, in an order to show cause caused by the Special Term of the Third District, founded on a petition presented to that Court, and entitled "Supreme Court, County of Albany," appeared in the Special Term of the First District, under a stipulation with the defendant Insurance Company.

Without the knowledge or acquiescence of the parties, the Clerk struck out the names of the parties and directed the names of Hackett and the parties declined to appear. By the practice of the Court, it was necessary that the order thus made should be entered in the proper clerk's office be consummated in an effective order.

It was in no condition in that stage of the proceedings to operate as a judgment. To hold otherwise would lead to the most incongruous consequences. Without actual entry in the clerk's office, it could not be transcribed. It could receive no official seal. It could not be referred to in the Clerk's official acts. It could not be taken into account by the Clerk's office. Hackett had nothing to withhold from the notice of his appeal.

except the memory of officials, and nothing to put on paper except affidavits of witnesses stating the transactions in the courts.

There is absolutely nothing in the form of a record to sustain an appointment.

On the morning of the following day, at the hour of five o'clock, the petition under which this incomplete appointment of Mr. Hackett was initiated, but never consummated, was returned into the court in the Third Judicial District; and the order granted in that district in Snowcase, &c., in the First District (which was the order and for jurisdiction in the First District), was revoked. The incomplete proceedings tending to the appointment

Mr. Hackett were abandoned and discontinued, and on the petition the appointment of Mr. Stansbury as receiver was then made, and the Insurance Corporation, at the same time in the same court, was dissolved. The decree of dissolution and the appointment of Mr. Stansbury were immediately entered and entered on record in the Clerk's office of the County of Albany, and there remained at this moment in full force and effect, not a shadow of a complaint.

In answer to the case thus presented to say that the Deputy Attorney-General, who conducted the proceeding ought not to have abandoned the selection of Mr. Hackett and ought not to have procured the revocation of the order to show cause before this district; nor even that his proceeding was a nullity, would be to say that the law was not

Neither will they have not been set aside, and Mr. Stansbury's argument in the attitude to resist the effort, and to demand that they ought to be set aside, when a motion for that purpose shall be made.

Thus armed with the appointment of the Supreme Court—made its officer—holding possession of the assets of the Insurance Company, not as President or agent of that Company but as the officer of the Court—the attempts made on his part

derived by Mr. Brock of Mr. Harker, and by the latter from the Superintendent of the mines, and by the Superintendent from the partner, and conducted in the name of the attorney General, and by an officer empowered to use authority, become attempts against the Court and the custody which the Court commands.

The Teller suit purports to be an action against a party competent to be sued. It was indisputable that there should be a defendant to give the action any validity whatever.

But there was no such defendant when that action was commenced—the corporation was dissolved. As well might it have been prosecuted against the dead.

It never had any vitality—it could not impart any to the issue.

Third: It is respectfully submitted that this Court has jurisdiction to proceed against Mr. Stansbury by contempt or contempt, because he declines to recognize the authority of Mr. Haskin or Mr. Hackett.

Such an exercise of jurisdiction would present the extraordinary spectacle of a proceeding against a coordinate branch of the Court itself.

The Supreme Court of the Third District commands Mr. Stansbury to take and hold the assets of the Insurance Co. of the State. The Supreme Court in the First District is invoked to punish him for contempt if he obeys the command.

Such an authority exercised in this District over the Court in the other Districts would be subversive of all order. It is respectfully submitted that when the case is presented in that shape, the Court in this District would suspend its action.

Otherwise the process of commitment for contempt would become absolute in the district to supplant and intercept the jurisdiction of the Appellate Courts as well as to control and dominate the coordinate jurisdiction of the Supreme Court in the other districts of the State.

2. Such a course of proceeding may devolve on the Court in the Third District, and the public officers who have been instrumental in securing the appointment of Mr. Stansbury

3. Should Mr. Hackett deem it proper to apply to be the name of Mr. Stansbury stricken from the enrolled declaration and insert in his own, the question of the regularity of Stansbury, and of the irregularity of the appointment of M. Stansbury, if it was irregular, will be properly presented for determination. In that proceeding, the Superintendent of Insurance Department and the Attorney-General can be heard.

And opportunity will be afforded to show that there is no reported precedent in the whole history of the Courts of Equity in England or in this State for a summary appointment by the Court, defeating and denying the *right* of the parties to be heard in the selection of a receiver.

extended over a long period, and, owing to the manner in which the accounts of some of the establishments are handled, the inquiry is necessarily tedious and is being protracted. However, the tangled skein of fraud is being slowly but surely unraveled, and some of our own developments, which the authorities do not at this time choose to make public, have some one to enlighten. For instance, in the case of seizure of the *Albatross*, it was found that the ship was not, as it was stated, has assessed the deficiency at about \$200,000. There is one instance in which the Government has only received a revenue of about \$100,000 out of \$307 in nine months, although a large business is known to have been transacted.

The respective stories of Henry Rogers, No. 10 Cedar-st., Front-st., and of Bourne & Collins, No. 10 Cedar-st., have been released, but their activities are still held under reserve.

William, Deputy Commissioner of Internal Revenue, is expected to be down this morning and com-